

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. OR MC 28204 through OR MC 28209.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Farrell D. Clontz, pro se.

# OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of May 16, 1983, the Oregon State Office, Bureau of Land Management (BLM), declared the unpatented Dee, Ranchview, and Ranchview #2 through #5 lode mining claims, OR MC 28204 through OR MC 28209, abandoned and void because no proof of labor or notice of intention to hold the claims for 1980 or 1981 was filed with BLM, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellant states that he sent a proof of labor to BLM each year, 1980 and 1981, after recording it in Stevens County, Washington. Copies of the recorded proofs of labor for 1980 and 1981 accompanied the appeal.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located on Federal land to file in the county where the location notice is on record and in the proper office of BLM, on or before December 30 of each calendar year, a proof of labor evidencing performance of assessment work on the claim or a notice of intention to hold the claim. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the claim. As no proof of labor or notice of intention to hold the claim for 1980 or 1981 was timely filed with BLM, BLM properly deemed the claim to be abandoned. J & B Mining Co., 65 IBLA 335 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirement of FLPMA rests with the owner of the unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend time for compliance, or to afford any relief from the statutory consequences, no matter how meritorious the appeal. Lynn Keith, 55 IBLA 192, 88 I.D. 369 (1981).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, supra at 196, 88 I.D. at 371-72.

The regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Filing is accomplished only when a document is delivered to and received by the proper BLM office. The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, supra.

BLM stated that it did not receive either the 1980 or the 1981 proof of labor. Appellant states only that he had mailed the proof of labor each year. As no timely receipt of the proofs of labor has been shown, it must be found that BLM was not acting improperly in its decision declaring the claims abandoned and void, under the terms of FLPMA.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

